BAIL SLIP

The Appellant/Accused was directed to be released on bail in and by the order of this Court dated 31.8.2000 made in Crl.MP.No.5880/2000 in Crl.A.No.747 of 2000 on the file of High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.747 of 2000

Kandasamy .. Petitioner/Accused-1

vs.

The Inspector of Police,
Oothukuli Police Station,
Erode District,
Cr.NO.223 of 1999 .. Respondent/Complainant

Prayer: This Revision petition has been preferred under Section 374 of Crl. P.C. against the judgment dated 14.8.2000 made in S.C.No.103 of 2000 on the file of the Principal Sessions Judge, Erode.

For Appellant : Mr.V.Parthiban, Legal Aid Counsel

For Respondent : Mr.V.R.Balasubramanian
Additional Public Prosecutor

JUDGMENT

This appeal has been preferred against the judgment in S.C.No.103 of 2000 wherein the present appellant was arrayed as A1, who along with his wife-A2 was charged under Section 302 r/w 109 IPC and convicted and sentenced under Section 325 IPC to undergo two years RI and fine of Rs.1000/- with default sentence. The co-accused, the wife of the appellant, was acquitted from the charges levelled against her.

2.The short facts of the prosecution case is that on 14.7.1999 at about 15.00 hours, the A1/appellant in front of his house due to previous enmity and with the instigation of A2 assaulted the deceased with hands on his back, chest and kicked him from the piol to the ground due to which the victim sustained grievous injury on his head as a result of which he breathed his last on 15.7.1999 at about 6.00 am.

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3.The case was taken on file by the Judicial Magistrate, Perundurai in P.R.C.No.12 of 1999 and on appearance of the accused on summons, copies under Section 207 Cr.P.C., were furnished to the accused. Since the case is triable by the Court of Sessions, the learned Judicial Magistrate has committed the case to the Court of Sessions under Section 209 Cr.P.C. The learned Principal Sessions Judge, Erode, on appearance of the accused framed charges under Section 302 IPC against A1 and under Section 302 r/w 109 IPC against A2 and when questioned the accused pleaded not guilty.

4.The prosecution has examined P.W.1 to P.W.19 and exhibited Ex.P.1 to Ex.P.20 and marked M.O.1 to M.O.8.

5.P.W.1 is the wife of the victim. According to her, on the date of occurrence A1 came to her house and abused her husband and assaulted him with hands and dragged him to his (A1) house and that she(P.W.1) and others followed the accused and the victim and when they reached the house of the accused, A2 came out of the house of the accused and abused the victim in filthy language and also caught hold of the hair of the victim facilitating A1 to fist the victim on his face. When the victim was sitting on the piol of the accused, the A1 kicked him which resulted the victim fell from the piol on the ground and sustained injury on his head. According to P.W.1, her husband has also sustained an injury on the lower part of his lip and that a mediation took place at the intervention of P.W.12 and that she and her husband returned to their house after consulting a private doctor P.W.6, who gave prescription and ointment for headache and that both of them went to sleep and in the morning at about 6.00 am, she found her husband lying dead in the bed. She has sent word to her father-in-law P.W.14 and mother-in-law and that P.W.14 came to her house at about 2.00 pm on the following day of the occurrence and as per his instructions she was about to go to the police station to prefer a complaint, on her way she met P.W.7-VAO and narrated the incident which was reduced to writing and P.W.7 accompanied her to the police station where she preferred Ex.P.1-complaint.

6.P.W.2 to P.W.5 have not supported the case of the prosecution. Hence, they were treated as hostile witnesses.

7.P.W.6 is the doctor, who had treated the victim on the date of occurrence for headache. Ex.P.3 is the prescription given by him to the victim.

8.P.W.7 is VAO, in whose presence P.W.1 preferred the complaint in which he has made Ex.P.4-endorsement.

9.P.W.19 is the Inspector of Police, who had registered the case under Cr.No.223 of 1999 of Oothukuli Police Station under Section 302 IPC on the basis of Ex.P.1-complaint preferred by P.W.1. Ex.P.12 is the FIR. P.W.19 had proceeded to the place of occurrence and conducted inquest on the

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corpse in the presence of witnesses. Ex.P.20 is the inquest report. He has also prepared observation mahazar Ex.P.6 and rough sketch Ex.P.19 in the presence of P.W.7. He has examined the witnesses and recorded their statement and also recovered M.O.1 and M.O.2 in the presence of P.W.7 under Ex.P.7-mahazar.

10.According to P.W.8-VAO, on the representation made by the accused on 16.7.1999 took them to Oothukuli Police Sation and surrendered them. The Inspector of Police had arrested them and sent them to judicial custody. On 16.7.1999 at about 8.30 am the corpse of the victim was sent for autopsy through P.W.16, who had handed over the corpse to P.W.15, doctor for postmortem. After postmortem P.W.16 has recovered the wearing apparels of the victim viz. M.O.5 to M.O.8 and handed over the same to P.W.19 along with his special report Ex.P.10, which were recovered under Ex.P.11-Form 95 by P.W.19 and sent to the Court. Express FIR was sent to the concerned officials including Judicial Magistrate through P.W.17. Material objects were sent to Forensic Science Laboratory for chemical examination through the Court. P.W.18 is the examiner of the Court of Judicial Magistrate No.III, Erode, who would depose that as per Ex.P.13-letter of requisition, material objects connected in this case were sent to Forensic Science Laboratory, Chennai along with Ex.P.14-letter of the Judicial Magistrate and that Ex.P.15 is the chemical analyst's report and Ex.P.16 & Ex.P.17 are the serologist's report. The place of occurrence was photographed by P.W.9. M.O.3(series) are the positives and M.O.4 (series) are the negatives.

11.P.W.10 is the van driver in whose van the corpse of the victim was taken from the place of occurrence to the mortuary at the Government Hospital, Tirupur.

12.P.W.11, P.W.12 & P.W.13 have not supported the case of the prosecution. P.W.14 is the father of the victim.

13.P.W.15 is the doctor, who has conducted the autopsy on the corpse of the victim. The doctor has opined that the deceased died due to shock and hemorrhage due to the head injury some 28 to 30 hours prior to the autopsy. Ex.P.9 is the postmortem certificate. In the postmortem certificate Ex.P.9, the Doctor had noted a fracture on the right temporal bone on the skull of the deceased and he has also noted extra dural haematoma in right fronto parieto temporal region and also noted a contusion on the left side of the lower lip of the deceased.

14. The Investigating Officer P.W.19 had examined the witnesses and recorded their statements and after completing the formalities, has filed the charge sheet against the accused on 28.7.1999 under Section 302 r/w 109 IPC.

15.When incriminating circumstances were put to the accused under Section 313 Cr.P.C., the accused denied their complicity with the crime.

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Neither oral evidence nor documentary evidence was let in on the side of the accused.

16.After going through the available evidence both oral and documentary, the learned trial Judge has come to the conclusion that an offence under Section 325 IPC has been attracted against A1 and accordingly convicted and sentenced A1 under Section 325 IPC to undergo 2 years RI and fine of Rs.1000/- with default sentence and A2 was acquitted on the ground that the charge against A2 was not proved beyond any reasonable doubt. Aggrieved by the findings of the learned trial Judge A1 has preferred this appeal.

17.The learned counsel appearing for the appellant would contend that except the sole evidence of P.W.1 there is no other evidence to corroborate the same and hence nor importance can be attributed to the evidence of P.W.1, who is also an interested witness, none other than the wife of the victim, to warrant conviction against A1.

18.The learned Additional Public Prosecutor relying on AIR 1991 SC 1735 (Jayaram Shiva Tagore and others Vs. State of Maharashtra), would contend that the testimony of sole eye witness can be relied on, while brining home the guilt of the accused. The short facts of the above said dictum is that:

> "In a charge under Section 302 IPC all the four accused are brothers and both the deceased as well as the accused belong to the Maharwada community of Nandani village. P.W.5 is the wife of the deceased. They had a male child by name Raju. P.W.10 is the mother of the deceased. The deceased have two brothers examined as P.Ws.8 & 7 and they were living separately in the same house. The deceased was in occupation of one of the apartments. On the fateful day the deceased left his house for the field after taking his breakfast. While he was working in the field of P.W.12, P.W.5 came to the field with the food for the deceased leaving her child Raju in the house in the care of one Vatsala P.W.6. P.W.5 did not return to home. Since the child was crying, Vatsala took the child to the field. While Vatsala was on her way to the field, she saw P.W.5 weeping by the side of the dead body of her husband. Vatsala returned to her house and informed her father and also P.Ws.7 & 8. Immediately P.Ws.7 & 8 rushed to the scene of occurrence, where P.W.5 had narrated what she had seen on her own eyes. According to P.W.5, four accused have assaulted her husband with sickles and scythes and done to death. A complaint was preferred and a criminal case was registered against the accused and the case came up for trial before the Court of Sessions. The entire case of the prosecution hinges upon the sole evidence of P.W.5. The trial Court convicted the accused. But taking contrary view, the High Court acquitted the accused, which necessitated the State to prefer an appeal before the Honourable Apex Court.

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The exact observation of the Honourable Apex Court, for the purpose of this case relating to the point whether the conviction is maintainable on the basis of the sole eye witness is maintainable, runs as follows:-

"In this appeal, the learned counsel for the appellants submits that there are certain infirmities in the evidence of sole eye-witness P.W.5 and to place reliance on such testimony of the sole eye-witness, the Court should find it to be wholly reliable. It is true that this Court has held that where the prosecution rests on the sole testimony of an eye-witness, the same should be wholly reliable. However, that does not mean that each and every type of infirmity or minor discrepancies would render the evidence of such witness unreliable."

Even though P.W.1 is the wife of the victim and her evidence was not corroborated by P.W.2 to P.W.5, it is not a ground to eschew her evidence in toto. The motive for the occurrence is spoken to only by P.W.1. On the date of occurrence at about 2.00 pm while her husband (deceased) was in the house, when she enquired him why he failed to come to the work spot in the morning, he confessed before her that on his lust over A2-Gowry, wife of A1, he made a false misrepresentation to A2 that her husband-A1 had met with an accident and sustained injury on his eye and was taking treatment at a private hospital and took her (A2) to Coimbatore and tried to molests her and at that time A1 came to the house of P.W.1 and abused the victim and also fisted him on his face two or three times and dragged him to his(A1) house and that she followed them and when the A1 reached his house A2, his wife Gowry, came out of the house and caught hold of the hair of the victim facilitating A1 to assault on the face of the victim and while her(P.W.1) husband was sitting on the piol of the accused, A1 kicked at the victim which resulted in the victim sustaining grievous injury on his head due to his fall on the ground. Immediately the victim was taken to hospital, as seen from the evidence of P.W.6, who would say that both the victim as well as his wife complaint of headache to the victim and he could see a contusion on the head of the victim and advised to go to government hospital and also prescribed an ointment by name Diogno Pena Gel under Ex.P.3.

19.The learned counsel for the appellant relying on the deposition of P.W.6 in the cross-examination would contend that the victim had sustained injury due to a fall from a cycle. Admittedly P.W.6 is a private doctor, who is not entitled to treat a patient, who has involved in a medco legal cases. In the chief-examination, he would depose that both the victim and his wife approached him only for treatment for head-ache and he had noticed a contusion on the head. Since at that time probably both the victim and his wife P.W.1 without realizing the seriousness of the gravity of the injury sustained by the victim might have informed P.W.6 that victim was suffering from headache. At the time when P.W.6 deposed before

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the Court, the victim died. So to avoid further complication P.W.6 in the cross-examination might have deposed that the victim informed him that he sustained injury only due to a fall from a cycle. Nowhere in her evidence P.W.1 or any other witness examined in this case deposed that the victim has sustained injury due to a fall from a cycle. Under such circumstances, it cannot be inferred from the evidence of P.W.6 in cross-examination that the victim had sustained injury only due to a fall from the cycle eschewing the ocular evidence of P.W.1. Further the medical evidence of P.W.15, Postmortem doctor, corroborates the evidence of P.W.1 in respect of in the injuries sustained by the victim on his head.

20.The learned counsel for the appellant would advance another argumant that the offence under Section 323 is attracted against the accused on the ground that the victim had sustained only simple injury at the hands of A1. This contention cannot also be sustainable because it is in evidence from P.W.1. that when the victim was sitting on the piol of the accused, A1 kicked the victim which resulted the victim fell on the ground and sustained injury on his head. Postmortem report Ex.P.9 will go to show that there was a fracture on the right temporal bone of the victim. Under such circumstances it cannot be said that there was no intention for A1 to cause grievous injury to the victim. Only due to the kick administered by A1, the victim fell down on the ground and sustained grievous injury on the head. Under such circumstances, as rightly held by the learned trial Judge, an offence under Section 325 IPC alone is attracted against A1.

21.When coming to the sentence part the learned counsel would contend that some leniency may be shown considering the fact that the accused hat at no point of time had any intention to kill or cause any grievous injury on the victim and that no weapon was used by the accused at the time of occurrence. Heard the learned Additional Public Prosecutor on this score, who also says that the sentence alone can be reduced or modified to that of one year RI instead of two years RI. Under such circumstances, I am of the view that the sentence alone is to be modified in this appeal against A1.

22.In fine, the appeal is dismissed confirming the conviction of A1 under Section 325 IPC passed by the learned Principal Sessions Judge, Erode, in S.C.No.747 of 2004, but the sentence alone is modified to that of one year RI instead of two years RI. In other respects, the findings of the learned trial Judge is confirmed. The learned trial Judge is

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directed to secure the A1 to send to prison to serve the unexpended portion of the sentence.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssv

To,
1.The Principal Sessions Judge, Erode.

2.The Judicial Magistrate, Perundrurai.

3.The Chief Judicial Magistrate, Erode.

4.The Public Prosecutor, High Court,
Madras.

5.The Inspector of Police,
Oothukuli Police Station, Erode.

+ 1 CC To Mr.V.Parthiban, Advocate SR NO.35245

Crl.A.No.747 of 2000

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